

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

OP.No. 14822 of 2000(M)

PETITIONER:

**THE TELlicherry TALUK CO.OP. MARKETING
AND PROCESSING SOCIETY LTD., NO.LL 235,
P.O.MATTANNUR, REP.BY ITS MANAGING
DIRECTOR C.K.GOVINDAN, S/O.KUNHIRAMAN NAMBIAR
AGED 50 YEARS, MATTANNUR P.O.,
KANNUR DISTRICT.**

**BY ADV. SRI.C.KRISHNAN(KANNUR)
SRI.A.MOHAMED MUSTAQUE**

RESPONDENTS:

- 1. THE LABOUR COURT, KANNUR.**
- 2. THE DISTRICT LABOUR OFFICER,
KANNUR.**
- 3. K.RAGHAVAN, S/O. KUNHAMBU, 58 YEARS,
OIL MILL ASSISTANT RETD.
"RAJNI NIVAS", ELAMPARA P.O.,
EDAYANNUR , KANNUR DISTRICT.**

**BY ADV. SRI.T.A.RAMADASAN
SMT.S.ANITHA
GOVERNMENT PLEADER SMT.SREELATHA**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP. NO.14822/2000

ORDER ON CMP. NO.24042/2000 IN OP. 14822/2000

DISMISSED

06.11.2007

SD/- S.SIRI JAGAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PETITION IN CP /99 FILED BY 3RD RESPONDENT.

EXT.P2:- COPY OF THE COUNTER STATEMENT FILED BY RESPONDENT IN CP 2/99.

EXT.P3:- COPY OF THE REJOINDER STATEMENT FILED BY THE PETITIONER.

EXT.P4:- COPY OF THE ORDER PASSED BY THE LABOUR COURT KANNUR.

EXT.P5:- COPY OF THE NOTICE UNDER G3-1317/2000 DT. 26.4.2000 ISSUED BY 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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S. SIRI JAGAN, J.

O.P.No.14822 OF 2000

Dated this the 6th day of November, 2007

JUDGMENT

The petitioner herein is a Co-operative Society which is the respondent in C.P.No.2 of 1999 on the files of the Labour Court, Kannur. That C.P. was filed by the 3rd respondent herein claiming certain benefits in terms of money allegedly payable by the petitioner. By Ext.P4 order, in that C.P., the Labour Court directed the petitioner to pay an amount of Rs.63,473.60/- as benefits payable to the 3rd respondent in terms of money by the petitioner. The petitioner is challenging Ext.P4 order on the ground that these amounts could not have been computed by the Labour Court under Section 33 C(2) of the Industrial Disputes Act.

2. The learned counsel for the 3rd respondent would refute the contentions of the petitioner. According to her, all the benefits claimed in the C.P. are benefits which can be computed in terms of the money which squarely comes within the purview of Section 33C (2) of the Industrial Disputes Act and therefore

there is no merit in the writ petition.

3. I have considered the rival contentions in detail. Ext.P1 is the claim petition filed by the 3rd respondent in the C.P. Five items of benefits are claimed in that claim petition which are:

- 1) Benefits due under time bound higher grade due to the 3rd respondent.
- 2) Excess recovery made by the management from the 3rd respondent towards shortage of stock based on audit report.
- 3) Amounts due to the 3rd respondent by way of pension under the Employees Self Financing Pension Scheme.
- 4) Dearness Allowance payable to the 3rd respondent with effect from 1.4.1989 in accordance with G.O.(P) No.56/92/Co.op dated 9.6.92.
- 5) Amounts due to the 3rd respondent by way of welfare fund on retirement.

4. In respect of excess recovery for deficit in stock, the petitioner does not dispute their liability to pay the same to the 3rd respondent amounting to Rs.1,557.60/-. With regard to payment of Welfare Fund Contribution also, the only contention raised by the petitioner before the Labour Court was that they are unable to pay the same on account of financial strain. That amount comes to Rs.4,500/-. Therefore, as far as those two amounts are concerned, the petitioner cannot validly challenge Ext.P4 order.

4. With regard to the claim for time bound higher grade promotion benefits, the specific contention in Ext.P2 written statement of the petitioner is that the Government order granting higher grade has only prospective effect and the 3rd respondent can claim the benefits only from the date of the Government order. They have specifically disputed entitlement of the 3rd respondent for promotion to higher post. They have further submitted that the time scale to which higher grade promotion is to be granted to the 3rd respondent is to be decided by the Registrar of Co-operative Societies. It is averred in Ext.P2 that the petitioner had sent proposals to the Registrar of Co-operative Societies for grant of Higher Grade to the 3rd respondent in respect of which the Registrar of Co-operative Societies has not passed any orders. Therefore the 3rd respondent cannot claim benefits of higher grade promotion by a petition under Section 33C (2) of the Industrial Disputes Act. The contention of the 3rd respondent in this regard is that the benefits of time bound higher grade is also benefits which can be computed in terms of money and therefore the same would squarely fall within the purview of Section 33C (2) of the Act. However, I am not inclined to accept the contention of

the 3rd respondent in this regard. Higher grade can be granted to the 3rd respondent in time scale approved by the Registrar of Co-operative Societies. The question of eligibility of the 3rd respondent for higher grade promotion and the scale in which such higher grade promotion has to be granted is to be decided by the Registrar of Co-operative Societies. Therefore, the same is not a benefit, the entitlement of which has been decided by any competent authority. As such, the 3rd respondent cannot invoke Section 33C (2) of the Industrial Disputes Act for computation of that benefit in terms of money. As such the Labour court exceeded its jurisdiction in directing the petitioner to pay the amounts allegedly due to the 3rd respondent in respect of higher grade promotion.

5. The next claim is regarding pension. The pension claimed in the C.P. is as per the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 framed by the Government of Kerala in S.R.O.No.323/95. As per the same, the pension has to be decided and paid by the board constituted under Clause 4 of the Scheme. That being so, the 3rd respondent cannot invoke Section 33C(2) of the Industrial Disputes Act for claiming pension that too against the

petitioner. If the 3rd respondent is eligible for pension, he has to establish his claim before the pension board in accordance with the scheme. He cannot invoke Section 33C(2) for the purpose against the petitioner. As such, in respect of pension also Ext.P4 order is unsustainable.

6. The last claim is in relation to arrears of DA in accordance with the Government order in question. In Ext.P2 written objections, the petitioner has specifically stated that consequent to the revision of pay of the 3rd respondent, as per G.O.(P)No.56/92 dated 9.6.92, the Joint Registrar of Co-operative Societies has accorded sanction for payment of arrears only with effect from 1.7.92. The 3rd respondent seeks payment of arrears of DA from 1.4.1989 to 30.6.1991. In view of the above contention, the proper remedy of the 3rd respondent is to approach the Registrar of Co-operative Societies for that amount also since the right of the petitioner has not been decided by the competent authority enabling the 3rd respondent to invoke Section 33 C(2) of the Industrial Disputes Act. As such, Ext.P4 as regards the payment of DA arrears is also unsustainable.

7. Accordingly, I modify Ext.P4 award deleting the

direction of the Labour Court to pay the benefits under time bound higher grade promotion, Pension under the Employees Self Financing Pension Scheme and DA arrears, but upholding the direction to pay the excess amount recovered for deficit in stock amounting to Rs.1557.60/- and Welfare Fund contributions to the extent of Rs.4,500/-. The said amounts of Rs.1,557.60/- and Rs.4,500/- shall be paid with interest at 12% as directed in Ext.P4 order from 26.2.1999 till date of payment within one month.

The original petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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